

**DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

BIGBEE STEELE & TANK COMPANY
Respondent

Case No.: I-00-11217

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

BIGBEE STEELE & TANK COMPANY
Respondent

Case No.: I-00-11218

(Consolidated)

FINAL ORDER

I. Introduction

These consolidated cases arise under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 – 2-1802.05, and Title 20 Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notices of Infraction (00-11217 and 00-11218) the Government charged Respondent Bigbee Steele & Tank Company with two violations of 20 DCMR 900.1 which prohibits, with certain exceptions not pertinent here, the idling of a motor vehicle’s engine for more than three (3) minutes while the vehicle is parked, stopped or standing (the “Regulation”). In each Notice of Infraction the Government charged that a truck being operated on behalf of Respondent violated the Regulation on June 15, 2001, in the 100 Block of M Street, N.E., and a \$500 fine is sought in each case.

Respondent filed timely pleas of Admit with Explanation, together with a request for the suspension or reduction of the fines. By order dated July 19, 2001, the Government was permitted to reply to Respondent's requests within ten (10) calendar days of the service of the order. The Government has not responded within the allotted time. These cases are now ripe for decision.

II. Summary of the Evidence

Respondent states that the violations occurred while two of its trucks were in the process of making deliveries. After one of the trucks had been unloaded it was left parked on the street with its engine running while the driver helped unload the other truck, which also was parked on the street with its engine idling. Respondent points out that the ambient temperature was in the 90s and that the engines were left idling to operate the trucks' air conditioning systems.

As grounds for its request for suspension or reduction of the fines, Respondent states that it was not aware of the Regulation and that if the Government's inspector had given a warning, instead of issuing the Notices of Infraction, the drivers would have readily complied with the Regulation. Respondent has given its assurance that its drivers will comply with the Regulation in the future.

III. Findings of Fact

1. By its plea of Admit with Explanation Respondent has admitted that it violated the Regulation as charged in each Notice of Infraction.
2. Respondent has accepted responsibility for its unlawful conduct.

3. Respondent has taken steps to ensure future compliance with the Regulation.
4. There is no evidence in the record of a history of non-compliance by Respondent.

IV. Conclusions of Law

By idling the engines of its two trucks for more than three minutes while parked, Respondent violated the Regulation on June 25, 2001, as charged in the Notices of Infraction. The fine for this violation is \$500 for each offense. 16 DCMR §§ 3201.1(b)(1), 3224.3(aaa).

Respondent's excuse that it was unaware of the Regulation is of no legal consequence. In *District of Columbia Department of Health v. Bloch & Guggenheimer*, OAH No. I-00-10439 at 3-4 (Final Order, April 18, 2001), this administrative court said the following in response to a similar argument raised in that case:

As an entity doing business in the District of Columbia, Respondent is expected to be on notice of applicable District of Columbia laws, and is required to be in compliance with those laws – particularly those such as 20 DCMR 900.1 that have been in effect for years. Accord *Department of Health v. Good's Transfer, Inc.*, OAH Final Order, I-00-10436 at 3-4; see also *Shevlin-Carpenter Co. v. State of Minnesota*, 218 U.S. 57,68 (1910) (ignorance of law is no excuse, particularly where “(t)here is no element of deception or surprise in the law.”).

Respondent also asserts that the Government has not done enough to make the public aware of the proscriptions of 20 DCMR 900.1. In the District of Columbia, the Government's public notice obligation in this regard is to publish the law or regulation in the D.C. Register in keeping with applicable comment and review periods.... The text of 20 DCMR 900.1 and all recent amendments appear to have been published in the D.C. Register in accordance with those requirements

Respondent's complaint that the inspector could have given a warning, instead of issuing the Notices of Infraction, also does not excuse the violation. While the inspector has discretion to do this, there is no such legal requirement in connection with the Regulation. District of Columbia Department of Health v. Santee, Inc., OAH No. I-00-10275 at 3 (Final Order, August 31, 2000).

These arguments do not warrant a suspension or reduction of the fine in either of these cases. District of Columbia Department of Health v. Dillon Trucking, Inc., OAH No. I-00-11206 at 4 (Final Order, May 15, 2002). However, because Respondent accepts responsibility for the violations, is taking steps to ensure future compliance with the Regulation and there is no evidence in the record of a history of non-compliance, I will reduce the fine for each violation to \$250, for a total of \$500. See D.C. Official Code §§2-1802.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent Bigbee Steele & Tank Company shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions, within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail, pursuant to D. C. Official Code §§. 2-1802.04 and. 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of the mailing of this Order, by law, interest will accrue on the unpaid amount at the rate of 1 ½% per month, or portion thereof, beginning with the date of this Order. D. C. Official Code §2-1803 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit the payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 18002.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03 (b)(7).

/s/ **05/16/02**

Robert E. Sharkey
Administrative Judge